ESTTA Tracking number: **ESTTA352061**

Filing date: **06/10/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052394
Party	Defendant Emory L. Williams
Correspondence Address	EMORY L. WILLIAMS 11261 DOUGLAS DRIVE MIAMI, FL 33176 UNITED STATES
Submission	Answer
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Date	06/10/2010
Attachments	answer to petition to cancel - 92052394a.pdf (11 pages)(119328 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

For the mark COMBINE
Registration Number: 3780641
Registration Date: April 27, 2010

UNDER ARMOUR, INC.	)	
Petitioner,	)	
v.	)	Cancellation No.: 92052394
EMORY L. WILLIAMS,	)	
Registrant.	)	

ANSWER TO PETITON FOR CANCELLATION

Emory L. Williams ("Registrant") answers the Petition for Cancellation filed by Under Armour, Inc. ("Petitioner"), as follows:

1. Admit.

2. Registrant does not have sufficient information or knowledge to admit or deny the statement. Accordingly, the statement is denied.

3. Registrant does not have sufficient information or knowledge to admit or deny the statement. Accordingly, the statement is denied.

4. Registrant does not have sufficient information or knowledge to admit or deny the statement. Accordingly, the statement is denied.

5. Registrant does not have sufficient information or knowledge to admit or deny the allegation. Accordingly, the allegation is denied. Petitioner did not apply for registration of UNDER ARMOUR COMBINE in International Class 25 until Registrant sent Petitioner warning letters in 2009, followed by the cease and desist letter in March, 2010.

6. Registrant does not have sufficient information or knowledge to admit or deny the allegation. Accordingly, the allegation is denied. Petitioner contradicts itself by claiming that the shoes are developed specifically for the athletes at the

NFL Combine. The true facts are that Petitioner has been selling shoes to the general public with the infringing trademark of COMBINE through Petitioner's web site and web sites of several other Petitioner-affiliated or associated companies.

7. Admit.

8. Admit that Registrant did send Petitioner a cease and desist letter on August 10, 2009, and did object to Petitioner's use of the Mark COMBINE due to its several registrations including International Class 25. It did propose the resolution option as part of a proposed a joint venture.

9. Admit.

10. The allegation is denied. In spite of what the Petitioner wrote in the response letter dated September 4, 2009, it removed the shoes with infringing trademark on Petitioner's web site.

11. Registrant denies the allegation as stated in the petition. Because of Petitioner's voluntary removal of the trademark COMBINE from the names of the shoes listed on its website, Registrant considered the matter closed.

12. Registrant denies the allegation as stated. Registrant retained legal counsel to transmit a formal cease and desist letter dated March 29, 2010 because Petitioner resumed using s trademark on its footwear products on its web site, and because the use had become more extensive than before.

13. Admit.

14. Admit.

15. Admit.

16. Registrant denies the allegation as stated. Not listing the product on its web site does not mean that it did not sell the products.

17. Registrant denies the allegation as stated. Not listing the product on its web site does not mean that it did not sell the products.

18. No requirement to admit or deny.

19. Registrant denies the allegation. Registrant has used the COMBINE mark in the commerce in connection with the listed goods consisting of running shoes. When filing his trademark application on September 2, 2009, Registrant was not represented by counsel. He inadvertently misunderstood it to mean that he only needed to provide one specimen in each international class, and that it covered all the goods listed in the application, and that he had up to five years to use the mark on all the goods listed in the application after the application was approved and the mark registered. Hence, Registrant inadvertently maintained the listed goods in his statement of use even though it had not yet used the mark in connection with some of the listed goods. Registrant filed a Section 7 amendment to correct his misunderstanding on June 7, 2010. As a result of this amendment, this registration will now cover only those goods that were actually in use as of the date set forth in Registrant's statement of use filed with the original application. Pursuant to the ruling on *In re Bose Corp.* No 2008-1448 (Fed. Cir. 2009),

there is no clear and convincing evidence to show that Registrant willfully intended to deceive the USPTO. Registrant's error was inadvertent, and negligent at the most while not represented by the trademark attorney when filing the trademark application with the USPTO.

Moreover, when filing its trademark application for UNDER ARMOUR, Petitioner committed the same error. After its registration, Petitioner filed a Section 7 amendment to delete some products which Petitioner never used the mark UNDER ARMOUR but claimed under penalty of perjury that it had used the mark on these products. *See* the documents for the US registration UNDER ARMOUR with the registration number 2279668. If TTAB cancels Registrant's trademark for fraud, it should also cancel Petitioner's UNDER ARMOUR registration for the same reason.

20. Admit.

21. Admit.

22. Registrant denies the allegation. Registrant has used the mark on the running shoes. Registrant has already filed a Section 7 amendment to correct his inadvertent error of listing those unused products just like the Petitioner did for his unused products for its mark UNDER ARMOUR.

23. Registrant denies the allegation. Registrant has used the mark on the running shoes since at least as early as November 25, 2002. Registrant has already filed Section 7 amendment to correct his inadvertent error of listing those unused products

just like the Petitioner did for his unused products for its mark UNDER ARMOUR.

24. Registrant denies the allegation. Registrant has used the mark on the running shoes since at least as early as November 25, 2002. When filing his trademark application on September 2, 2009, Registrant was not represented by counsel. He inadvertently misunderstood that he only needed to provide one specimen in each international class, and that it covered all goods listed in the application, and that he had up to five years to use the mark on all the goods listed in the application after the application was approved and the mark registered. Hence, Registrant inadvertently maintained the listed goods in his statement of use even though it had not yet used the mark in connection with some of the listed goods.

25. Registrant denies the allegation. Registrant has used the mark on running shoes since at least as early as November 25, 2002. When filing his trademark application on September 2, 2009, Registrant was not represented by counsel. He inadvertently misunderstood that he only needed to provide one specimen in each international class, and that it covered all goods listed in the application, and that he had up to five years to use the mark on all the goods listed in the application after the application was approved and the mark registered. Hence, Registrant inadvertently maintained the listed goods in his statement of use even though it had not yet used the mark in connection with some of the listed goods.

26. Registrant denies the allegation. Registrant has used the mark on running shoes since at least as early as November 25, 2002. Registrant's erroneous listing of some goods associated with the mark was unintentional and inadvertent when he filed the application unrepresented by counsel. Registrant immediately filed a Section 7 amendment to correct his inadvertent error of listing those unused products just as Petitioner did for his unused products for its mark UNDER ARMOUR.

27. Registrant denies the allegation. When filing his trademark application on September 2, 2009, Registrant was not represented by counsel. He inadvertently misunderstood that he only needed to provide one specimen in each international class, and that it covered all goods listed in the application, and that he had up to five years to use the mark on all the goods listed in the application after the application is approved and the mark is registered. Hence, Registrant inadvertently maintained the listed goods in his statement of use even though he had not yet used the mark in connection with some of the listed goods. Registrant has in fact used the mark on the running shoes since at least as early as November 25, 2009. Thus, Registrant has no intention to commit fraud on the USPTO.

28. Registrant denies the allegation. Registrant has used the mark on running shoes since at least as early as November 25, 2002. Registrant's erroneous listing of some goods associated with the mark was unintentional and inadvertent when he filed the application unrepresented by counsel. Registrant immediately

filed a Section 7 amendment to correct his inadvertent error of listing those unused products just as Petitioner did for his unused products for its mark UNDER ARMOUR.

29. No requirement to admit or deny.

30. Registrant denies the allegation. Registrant has in fact used the mark on the running shoes since at least as early as November 25, 2002.

31. Registrant denies the allegation. Registrant has in fact used the mark on the running shoes since at least as early as November 25, 2002. He has never, is not abandoning and will not abandon the trademark registration of COMBINE.

Registrant further affirmatively alleges that:

32. Petitioner knowingly, and willfully infringed Registrant's trademark COMBINE, and continues to do so in spite of the repeated cease and desist letters sent to the Petitioner from Registrant and his counsel.

33. On information and belief, Petitioner filed the cancellation proceeding as part of a campaign to force Registrant to give up the registration after its negotiation with Registrant regarding purchasing the marks from Registrant failed.

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WHEREFORE, Registrant prays that the Cancellation petition be dismissed and the Registrant's registration of its trademark is sustained.

Dated: June 9, 2010

Respectfully submitted,

Law Offices of Bin Li

/Bin Li/
Bin Li
Attorney for Registrant

POWER OF ATTORNEY

Registrant hereby appoints Bin Li, an attorney at law and a member of the Bar of the State of California, having a principal business address of 17800 Castleton Street Ste 605, City of Industry, CA 91748 to receive all related communications, to transact all business in the US Patent and Trademark Office and/or Trademark Trial and Appeal Board in connection therewith, and to represent it in all proceedings and appeals that may arise in the US Patent and Trademark Office or the courts concerning this Petition for Cancellation.

Dated: June 9, 2010

/Emory L. Williams/
Emory L. Williams, Registrant

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June 2010, I served a true copy of the foregoing Answer to Petition to Cancellation by mailing same, first class mail, to counsel for Petitioner,

Douglas A. Rettew,
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
901 New York Ave. N.W.
Washington DC 20001-4413

/Bin Li/
Bin Li